GOVERNMENT OF ANDHRA PRADESH
ABSTRACT

Higher Education – Regularisation of teaching/non-teaching temporary staff working on Daily Wage/NMR or Consolidated Pay in the State funded Higher Educational Institutions – Examine proposal scrupulously in view of Act 2 of 1994, Orders of the Apex Court and various Act, Rules and Government Orders of State Government -Strict implementation – Orders - Issued.

HIGHER EDUCATION (U.E) DEPARTMENT

G.O.RT.No. 91 Dated: 30-06-2021.

Read the following:

1. Andhra Pradesh (Regulation of appointments to Public services and rationalisation of staff pattern and pay structure) Act, 1994 (Act 2 of 1994).
2. G.O.Ms.No.212, Finance & Planning (F.W.PC.III)Dept, dated: 22.4.1994.
3. Hon'ble Supreme Court Judgment in CA No.3702 of 2006 (ManjulaBhashin case).
4. Hon'ble Supreme Court in its judgment dated:10-4-2006 in 3595-2612 of 1999 in Umadevi Case.
5. From the Department of Personnel and Training (DOPT), Government of India, New Delhi, OM No. 49014/7/2020-Estt.(c), dated:07/10/2020.

ORDER:

It is observed that the State funded Higher Educational Institutions under the administrative control of Higher Education Department have submitted various proposals to Government for regularisation of teaching or non-teaching temporary staff working on Daily Wage/NMR or Consolidated Pay in their institutions in violation of the provisions of Andhra Pradesh (Regulation of appointments to Public services and rationalisation of staff pattern and pay structure) Act, 1994 (Act 2 of 1994), cited in the reference 2nd and various judgements of the Supreme Court of India in the reference 3rd and 4th read above.

2. In this regard, kind attention is invited to the **Article 16 of the Constitution of India, which** reads as**:**

"16. Equality of opportunity in matters of public employment

(1) There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State"

3. Further, Hon'ble Supreme Court of India its judgement dated 21/02/2013 in the case of **State of Orissa vs. Mamata Mohanty** in Civil Appeal No.1272 of 2011 emphasized on the settled legal proposition that "**the equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit**"; relevant portions para 18 and 19 of the Apex Court Order are extracted hereunder:

> **"***18. At one time this Court had been of the view that calling the names from Employment Exchange would curb to certain extent the menace of nepotism and corruption in public employment. But, later on, came to the conclusion that some appropriate method consistent with the requirements of Article 16 should be followed. In other words, there must be a notice published in the appropriate manner calling for applications and all those who apply in response thereto should be considered fairly. Even if the names of candidates are requisitioned from Employment Exchange, in addition thereto it is mandatory on the part of the employer to invite applications from all eligible candidates from the open market by advertising the vacancies in newspapers having wide circulation or by announcement in Radio and Television as merely calling the names from the Employment Exchange does not meet the requirement of the said Article of the Constitution.*
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> *19. Therefore, it is a settled legal proposition that no person can be appointed even on a temporary or ad hoc basis without inviting applications from all eligible candidates. If any appointment is made by merely inviting names from the Employment Exchange or putting a note on the Notice Board etc. that will not meet the requirement of Articles 14 and 16 of the Constitution. Such a course violates the mandates of Articles 14 and 16 of the Constitution of India as it deprives the candidates who are eligible for the post, from being considered.* ***A person employed in violation of these provisions is not entitled to any relief including salary****. For a valid and legal appointment mandatory compliance of the said Constitutional requirement is to be fulfilled. The equality clause enshrined in Article 16 requires that every such appointment be made by an open advertisement as to enable all eligible persons to compete on merit."*

4. As we are well aware that the judgments given by the Supreme Court is the Law of the land as they are binding under Article 141 of the Constitution of India. The Government felt that there is a dire need for reiterating the judgements of Apex Court, Acts and Orders of State Government of Andhra Pradesh with respect to regularization of services.

5. The Hon'ble Supreme Court in its judgment dated:10-4-2006 in 3595-2612 of 1999 in Umadevi Case held that **for regularization individuals should have completed 10 years of continuous service, but not under cover of orders of courts or of tribunals, in a duly sanctioned vacant post and with possessing minimum requisite qualifications**. The paras 15 and 53 in the judgment of **Umadevi case** are extracted hereunder:

> *"15. We have already indicated the constitutional scheme of public employment in this country, and the executive, or for that matter* ***the Court, in appropriate cases, would have only the right to regularize an appointment made after following the due procedure****, even though a non-fundamental element of that process or procedure has not been followed.* ***This right of the executive and that of the court would not extend*** *to the executive or the court being in a position* ***to direct that an appointment made in clear violation of the constitutional scheme****, and the statutory rules made in that behalf, can be treated as permanent or can be directed to be treated as permanent.*
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> *53. One aspect needs to be clarified. There may be cases where* ***irregular appointments (not illegal appointments)*** *as explained in S.V.NARAYANAPPA (supra), R.N.NANJUNDAPPA (supra), and B.N. NAGARAJAN (supra), and referred to in paragraph 15 above, of* ***duly qualified persons in duly sanctioned vacant posts*** *might have been made and the employees have* ***continued to work for ten years or more but without the intervention of orders of courts or of tribunals****. The question of regularization of the services of such employees may have to be considered on merits in the light of the principles settled by this Court in the cases above referred to and in the light of this judgment. In that context, the Union of India, the State Governments and their instrumentalities should* ***take steps to regularize as a one-time measure, the services of such irregularly appointed, who have worked for ten***

> ***years or more in duly sanctioned posts but not under cover of orders of courts or of tribunals*** *and should further ensure that regular recruitments are undertaken to fill those vacant sanctioned posts that require to be filled up, in cases where temporary employees or daily wagers are being now employed. The process must be set in motion within six months from this date. We also clarify that regularization, if any already made, but not subjudice, need not be reopened based on this judgment, but there should be no further by-passing of the constitutional requirement and regularizing or making permanent, those not duly appointed as per the constitutional scheme."*

6. Further, para 2 and 3 of the **circular of the Department of Personnel and Training (DOPT), Government of India** vide OM No. 49014/7/2020-Estt.(c), dated.07/10/2020 on the subject of "regularization of qualified workers appointed against sanctioned posts-Uma Devi judgement-facts/clarification-reg" are extracted hereunder:

> "2.(iv).*Regularization is not and cannot be a mode of recruitment by any State within the meaning of Article 12 of the Constitution of India, or any body or authority governed by a statutory* Act *or the Rules framed thereunder. Regularization, furthermore, cannot give permanence to an employee whose services are adhoc in nature. The fact that some persons had been working for a long time would not mean that they had acquired a right for regularization. (Para* 27).
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> (v) *Any regular appointment made on a post under the State or Union without issuing advertisement inviting applications from eligible candidates and without holding a proper selection where all eligible candidates get a fair chance to compete would violate the guarantee enshrined under* Article *16 of the Constitution (Para 30)*.
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> (vi) *If it is a contractual appointment, the appointment comes to an end at the end of the contract (Para 34*).

(vii) Regularization, if any already made, but not sub judice, need not be reopened based on this judgment, but there should be no further by-passing of the Constitutional requirement and regularizing or making permanent, those not duly appointed as per the Constitutional scheme (Para 44).

(viii) In cases relating to service in the commercial taxes department, the High Court has directed that those engaged on daily wages, be paid wages equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively appointed. The objection taken was to the direction for payment from the dates of engagement. We *find that the High Court had clearly gone wrong in directing that these employees be paid salary equal to the salary and allowances that are being paid to the regular employees of their cadre in government service, with effect from the dates from which they were respectively engaged or appointed. It was not open to the High Court to impose such an obligation on the State when the very question before the High Court in the case was whether these employees were entitled to have equal pay for equal work so called and were entitled to any other benefit. They had also been engaged in the teeth of directions not to do so. We are, therefore, of the view that, at best, the Division Bench of the High Court should have directed that wages equal to the salary that are being paid to regular employees be paid to these daily wage employees with effect from the date of its judgment. Hence, that part of the direction of the Division Bench is modified and it is directed that these daily wage earners be paid wages equal to the salary at the lowest grade of employees of their cadre in the Commercial Taxes Department in government service, from the date of the judgment of the Division Bench of the High Court. Since, they are only daily wage earners, there would be no question of other allowances being paid to them (Para* 46).

7. Additionally, it is also stated that vide the judgement of ***State of Karnataka Vs. M.L Kesari dated.03.08.2010****,* ***the Hon'ble Supreme Court had clarified some aspects of the Uma Devi judgement*** *which are pertinent for proper understanding of the said judgement dated.10.04.2006. These aspects brought out in the M.L.Kesari judgement are reproduced as under:*

(i) The employee concerned should have worked for 10 years or more in duly sanctioned post without the benefit or protection of the interim order of any court or tribunal. ***In other words, the State Government or its instrumentality should have employed the employee and continued him in service voluntarily and continuously for more than ten years.***

(ii) ***The appointment of such employee should not be illegal, even if irregular.*** *Where the appointments are not made or continued against sanctioned posts or where the persons appointed do not possess the prescribed minimum qualifications, the appointments will be considered to be illegal. But where the person employed possessed the prescribed qualifications and was working against sanctioned posts, but had been selected without undergoing the process of open competitive selection, such appointments are considered to be irregular.*

(iii) The employees who were entitled to be considered in terms of Para 53 of the decision in Umadevi, will not lose their right to be considered for regularization, merely because the one-time exercise was completed without considering their cases, or because the six month period mentioned in para 44 of Umadevi has expired. The one-time exercise should consider all daily-wage/adhoc/those ***employees who had put in 10 years of continuous service as on 10.4.2006*** *without availing the protection of any interim orders of courts or tribunals. If any employer had held the one-time exercise in terms of para 44 of Umadevi, but did not consider the cases of some employees who were entitled to the benefit of para 44 of Umadevi, the employer concerned should consider their cases also, as a continuation of the one-time exercise.* ***The <u>one time exercise</u> will be concluded only when all the employees who are entitled to be considered in terms of Para 44 of Umadevi, are so considered."***

8. Furthermore, post **enactment of the A.P. (Regulation of Appointments to Public Services and Rationalization of Staff Pattern and Pay Structure) Act 1994 (Act 2 of 1994)**, Government had issued G.O.Ms.No.212, dated:22-04-1994 promulgating a scheme in supersession of earlier Government Orders dealing with regularization of services of the persons appointed on Daily Wage/NMR or Consolidated Pay in the State, thereby approving a scheme for regularization and absorption of persons appointed on Daily Wage/NMR or Consolidated Pay.

The relevant portion of para (2) of the said G.O. prescribed the minimum conditions for the scheme and it reads as: "….*the scheme for regularization of the services of such persons who worked continuously for a minimum period of 5 years and are continuing on 25-11-1993 is subject to fulfilment of the following conditions:*

i. *The persons appointed should **possess the qualifications** prescribed as per rules in force as on the date from which his/her services have to be regularized.*
ii. *They should be **within the age limits** as on the date of appointment as NMR/Daily wage employee.*
iii. *The **rule of reservation** wherever applicable will be followed and back-log will be set-off against future vacancies.*
iv. *Sponsoring of candidates from Employment Exchange is relaxed.*
v. ***Absorption shall be against clear vacancies of posts** considered necessary to be continued as per work-load excluding the vacancies already notified to the Andhra Pradesh Public Service commission / District Selection Committee.*
vi. *In the case of Workcharged Establishment, where there will be no clear vacancies, because of the fact that the expenditure on Workcharged is at a fixed percentage of P.S. charges and as soon as the work is over, the services of workcharged establishment will have to be terminated, they shall be adjusted in the other departments, District Offices provided there are clear vacancies of last Grade Service"*

9. In addition, the Hon'ble Supreme Court upheld the Act 2 of 1994 and the Rules issued in the G.O.s through its judgement in CA No.3702 of 2006 (**ManjulaBhashin case**). The relevant paras 24, 26 and 39 of the said judgement are extracted hereunder:

> *"24. If the State Government had sincerely implemented the provisions of the 1994 Act, it may have succeeded in cleansing the mess created due to irregular employment of thousands of persons and, thereby, saved considerable revenue which could be utilized for execution of welfare schemes and development programmes. By ensuring that appointments against the sanctioned posts are made only from among the candidates selected by the specified recruiting agencies like Public Service Commission/College Service Commission etc. or from among the candidates sponsored by the employment exchanges, the State Government could have demonstrated its commitment to the system established by rule of law and determination to comply with the equality clause enshrined in the Constitution and other relevant statutory provisions in their true spirit.*
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> *Unfortunately, that did not happen because, in spite of the prohibition contained in Section 7 against regularisation of the existing daily wage employees and persons appointed on temporary basis, the State Government tilted under the pressure exerted by the vested interests and issued G.O. dated 22.4.1994 incorporating therein policy for regularisation of the services of those appointed on daily wages or nominal muster roll or consolidated pay, who had continuously worked for 5 years and were continuing on 25.11.1993, i.e., the date of enforcement of the 1994 Act. This was intended to be one time measure and not an ongoing process/scheme for regularization of the 5 years. A somewhat similar policy framed by the Government of India in 1993 for grant of temporary status to the casual labourers and regularization of their services was considered by this Court in Union of India v. Mohan Pal [(2002) 4 SCC 573] and it was held that a policy of this nature cannot be interpreted as creating a right in favour of all casual labourers to be regularized in service irrespective of the date of completion of the specified period. ……..*
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> *26. In order to remove the ambiguity and imperfectness in the language of G.O. dated.22.4.1994 and make the policy of regularisation an integral part of the 1994 Act, the legislature enacted Amendment Act Nos.3 of 1998 and 27 of 1998. The purpose of making the policy of regularisation a part of the 1994 Act was not to dilute the main object of the 1994 Act, i.e., to curb the menace of irregular appointments and also ensure*

that appointments are made against the sanctioned posts only from among the candidates selected by the designated recruiting agencies but also to harmonize the same with the prohibition contained in Section 7 against regularisation of daily wage and temporary employees. The preface of Act No.27 of 1998 clearly shows that the policy contained in G.O. dated.22.4.1994 was intended to be one time measure for regularisation of the persons employed on daily wages or nominal muster roll or consolidated pay, who completed 5 years continuous service on or before 25.11.1993, i.e., the date of enforcement of the 1994 Act and it was not a continuing scheme for regularisation of all 'daily wage employees' as and when they were to complete 5 years period. The language of first proviso to Section 7 by which the policy of regularisation was engrafted in the 1994 Act shows that the amendments were made with the sole object of removing the ambiguity in the policy contained in G.O. dated.22.4.1994 and the same were not intended to nullify or override the judgment in District Collector vs. M.L. Singh (supra). We have no doubt that if the language of the policy contained in G.O. dated.22.4.1994 was similar to the one contained in newly inserted proviso to Section 7 and there was no ambiguity in it, the courts would not have interpreted the same in a manner which would entitle all persons employed on daily wages before 25.11.1993 to claim regularisation irrespective of the date of completion of 5 years service. Here it will also be apposite to mention that the policy contained in G.O. dated.22.4.1994 did not confer an indefeasible right upon all daily wage employees (as the term has been defined in Section 2(ii) of the 1994 Act) to be regularised in service de-hors the date of enforcement of the Act. Therefore, it cannot be said that by incorporating the policy of regularisation in the 1994 Act, the legislature has taken away an accrued or vested right of the daily wage employees. It is interesting to note that the judgment of this Court in State of Haryana v. Piara Singh (supra) of which shelter was taken by the State Government for framing the policy of regularisation of daily wagers etc. in the teeth of the prohibition contained in Section 7 against such regularisation does not lay down that there will be wholesale regularisation of daily wagers, casual employees, work charge employees, etc. …….

39. We shall now consider whether the cut off date, i.e., 25.11.1993 specified in the first proviso to Section 7 of the 1994 Act (as amended by Act No.27 of 1998) for determination of the eligibility of daily wage employees to be considered for regularisation is arbitrary, irrational and violative of Articles 14

and 16 of the Constitution. Undisputedly, the Ordinance issued in 1993 was the first exercise of legislative power by the State to prohibit employment on daily wages and to restrict appointments on temporary basis and, at the same time, streamline the recruitment in public services by adopting a procedure consistent with the doctrine of equality embodied in Articles 14 and 16 of the Constitution. The 1994 Act was enforced with effect from 25.11.1993, i.e., the date on which the Ordinance was published in the official Gazette. Therefore, that date had direct bearing on the policy of regularisation circulated vide G.O. dated.22.4.1994, which was issued by the State Government in exercise of its executive power under Article 162 of the Constitution. When that policy was engrafted in the 1994 Act in the form of proviso to Section 7, the legislature could not have fixed any date other than 25.11.1993 for determining the eligibility of daily wage employees who fulfilled the requirement of 5 years continuous service. If any other date had been fixed for counting 5 years service of daily wage employees for the purpose of proviso to Section 7, the object sought to be achieved by enacting the 1994 Act would have been defeated, in as much as the regular recruitment could not have been made for appointment against the sanctioned posts and back door entrants would have occupied all the posts. Therefore, the cut off date i.e. 25.11.1993 prescribed by the legislature for determining the eligibility of daily wage employees and others covered by Section 7 of the 1994 Act cannot be dubbed as arbitrary, unreasonable, irrational or discriminatory……..”

10. Furthermore, as per the A.P. (Regulation of appointment to Public Services and Rationalization of Staff Pattern and Pay Structure) Act 1994 (Act 2 of 1994), the regularization of services of the individuals who were appointed on temporary basis on or before 25.11.1993 and who did not complete 5 years of service as on 25.11.1993 cannot be done. **The regularization beyond the cut-off date if done invites imprisonment under Act 2 of 1994**. The relevant sections of Act 2 of 1994 are furnished hereunder:

> *“7. **Bar for regularization of services**.- No person who is a daily wage employee and no person who is appointed on a temporary basis under section 3 and is continuing as such at the commencement of this Act shall have or shall be deemed ever to have a right to claim for regularization of services on any ground whatsoever and the services of such person shall be liable to be terminated at any time without any notice and without assigning any reason……:*

*9. **Abatement of claims**.- Notwithstanding anything contained in any judgment, decree or order of any court, tribunal or other authority, the claims for regular appointment of all daily wage employees and persons appointed on a temporary basis, shall stand abated and accordingly,-*

(a) no suit or other proceeding shall be instituted, maintained or continued in any court, tribunal or other authority by the daily wage or temporary appointees against the Government or any person or authority whatsoever for the regularization of the services;

(b) no court shall enforce any decree or order directing the regularization of the services of such persons; and

(c) all proceedings pending in any court or tribunal claiming the regularization of services shall abate.

*13. **Offences and Punishments** :(1) Any person or authority who contravenes the provisions of this Act shall apart from the penalties otherwise provided for, be punishable with imprisonment for a term which shall not be less than six months and which may extend upto two years and also with fine which shall not be less than five thousand rupees but which may extend upto ten thousand rupees.*

(2) No Court shall take cognizance of an offence punishable under this section except with the previous sanction of the Government."

11. Therefore, as per the Law declared by the Supreme Court, in the afore said judgments, which are binding under Article 141 of the Constitution of India, the enactment and orders of the State of Andhra Pradesh discussed above, the Government hereby order to the State funded Higher Educational Institutions under the administrative control of Higher Education Department to follow the law as per the provisions of Act No.2 of 1994, G.O.Ms.No.212 and the Apex Court judgements strictly before submitting any proposals to Government for regularization of any teaching/non-teaching temporary staff working on Daily Wage/NMR or Consolidated Pay in their institutions. In case of any deviation in matter, the Government will initiate not only disciplinary action, but also a punitive action under section 13 of Act 2 of 1994.

12. The Commissioner of Collegiate Education, the Secretary, A.P. State Council of Higher Education and the Registrars of the State Universities under the administrative control of Higher Education Department shall take necessary action accordingly.

(BY ORDER AND IN THE NAME OF THE GOVERNOR OF ANDHRA PRADESH)

SATISH CHANDRA
SPECIAL CHIEF SECRETARY TO GOVERNMENT

To
The Commissioner, Collegiate Education,
The Secretary, A.P. State Council of Higher Education,
The Registrars of all the State Universities,
Copy to:
Addl. P.S to Minister for Education
PS to Spl. CS to Govt. H.E. Dept.
Sc.

//FORWARDED :: BY ORDER//

SECTION OFFICER